

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:21-CV-00115-FDW-DCK

WE CBD, LLC,)
)
Plaintiff,)
)
vs.)
)
THE UNITED STATES OF AMERICA *et al.*,)
)
)
Defendants.)
)

THIS MATTER is before the Court *sua sponte* after reviewing the parties' pleadings relating to Plaintiff's constitutional claims. In its Amended Complaint, Plaintiff asserts, "Defendants have waived sovereign immunity as to Plaintiff's constitutional claims for deprivation of rights pursuant to 42 U.S.C. § 1983." (Doc. No. 13, p. 3). Defendants have filed a Motion to Dismiss, wherein Defendants seek dismissal of Plaintiff's constitutional claims pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because Plaintiff has "fail[ed] to allege a valid waiver of sovereign immunity...." (Doc. No. 14-1, p. 15). In response, Plaintiff merely cites to two cases, non-binding on this Court, and appears to allege – for the first time – that Defendants have waived sovereign immunity under the Administrative Procedure Act (the "APA"), 5 U.S.C. § 702.

Because the existence of subject-matter jurisdiction is a threshold issue that the Court must address before considering the merits of the case, the Court now orders the parties to file supplemental briefs concerning this Court’s jurisdiction over Plaintiff’s constitutional claims. Specifically, the parties are directed to address whether Defendants have waived sovereign immunity – pursuant to 42 U.S.C. § 1983, § 702 of the APA, or otherwise – with respect to Plaintiff’s constitutional claims. **Each parties’ supplemental brief shall be due on February 7, 2022, and**

shall not exceed 1,500 words.

IT IS SO ORDERED.

Signed: January 31, 2022



Frank D. Whitney
United States District Judge

